

§ 100.4

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TABLE XIV—PENALTY CONVERSION TABLE—
Continued

Points	Penalty (\$)
108	5,211
109	5,645
110	6,115
111	6,624
112	7,176
113	7,774
114	8,421
115	9,122
116	9,882
117	10,705
118	11,597
119	12,563
120	13,609
121	14,743
122	15,971
123	17,301
124	18,742
125	20,302
126	21,993
127	23,825
128	25,810
129	27,959
130	30,288
131	32,810
132	35,543
133	38,503
134	41,574
135	44,645
136	47,716
137	50,787
138	53,858
139	56,929
140	60,000
141	63,071
142	66,142
143	69,213
144 or more	70,000

(h) The effect of the penalty on the operator's ability to continue in business. MSHA presumes that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. The operator may, however, submit information to the District Manager concerning the financial status of the business. If the information provided by the operator indicates that the penalty will adversely affect the operator's ability to continue in business, the penalty may be reduced.

[72 FR 13635, Mar. 22, 2007, as amended at 73 FR 7209, Feb. 7, 2008]

§ 100.4 Unwarrantable failure and immediate notification.

(a) The minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act shall be \$2,000.

(b) The minimum penalty for any order issued under section 104(d)(2) of the Mine Act shall be \$4,000.

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than \$5,000 and not more than \$60,000 for the following accidents:

(1) The death of an individual at the mine, or

(2) An injury or entrapment of an individual at the mine, which has a reasonable potential to cause death.

[72 FR 13635, Mar. 22, 2007, as amended at 74 FR 68919, Dec. 29, 2009]

§ 100.5 Determination of penalty amount; special assessment.

(a) MSHA may elect to waive the regular assessment under § 100.3 if it determines that conditions warrant a special assessment.

(b) When MSHA determines that a special assessment is appropriate, the proposed penalty will be based on the six criteria set forth in § 100.3(a). All findings shall be in narrative form.

(c) Any operator who fails to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than \$7,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty of not more than \$375 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than \$220,000. For purposes of this section, a flagrant violation means “a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.”

[72 FR 13635, Mar. 22, 2007, as amended at 73 FR 7210, Feb. 7, 2008; 74 FR 68919, Dec. 29, 2009]